

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ANNABELLE YAO, on behalf of herself	)	Docket No. 18 C 7865
and all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CARILLON TOWER/CHICAGO LP, et al.,	)	Chicago, Illinois
	)	February 12, 2019
Defendants.	)	9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS AND MOTIONS  
BEFORE THE HONORABLE CHARLES P. KOCORAS

APPEARANCES:

For the Plaintiff: GLEN J. DUNN & ASSOCIATES  
BY: MR. GLEN J. DUNN, JR.  
221 N. LaSalle St., Suite 1414  
Chicago, Illinois 60601

MR. DOUGLAS E. LITOWITZ  
413 Locust Place  
Deerfield, Illinois 60015

For the Defts. GREENBERG TRAURIG LLP  
Carillon Tower, BY: MR. DANIEL G. HILDEBRAND  
Forefront, Symmetry 77 W. Wacker Drive, Suite 3100  
and Laytin: Chicago, Illinois 60601

For the Deft. Tizi: SEYFARTH SHAW LLP  
BY: MR. COLTON D. LONG  
233 S. Wacker Drive, Suite 8000  
Chicago, Illinois 60606

For the Deft. TD Bank: O'MELVENY & MYERS, LLP.  
BY: MR. EDWARD N. MOSS  
7 Times Square  
New York, New York 10036

1 APPEARANCES (Continued):

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3 For the Deft. TD Bank: RACHLIS DUFF ADLER PEEL & KAPLAN, LLC  
4 BY: MR. KEVIN B. DUFF  
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8 For the Deft. Fordham: PRETZEL & STOUFFER, CHTD.  
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18 \* \* \* \* \*

19 PROCEEDINGS RECORDED BY  
20 MECHANICAL STENOGRAPHY  
21 TRANSCRIPT PRODUCED BY COMPUTER  
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1 THE CLERK: 18 C 7865, Yao vs. Carillon Tower/Chicago  
2 LP, et al. Status; motion for preliminary injunction; to  
3 enforce; and, motion to dismiss.

4 MR. DUNN: Good morning, your Honor, Glen Dunn --  
5 D-u-n-n -- for plaintiffs.

6 THE COURT: Good morning.

7 MR. LITOWITZ: Doug Litowitz -- L-i-t-o-w-i-t-z -- for  
8 plaintiffs.

9 MR. HILDEBRAND: Dan Hildebrand, Greenberg Traurig,  
10 for the Carillon, Symmetry, Forefront and Mr. Laytin  
11 defendants.

12 MR. LONG: Colton Long, Seyfarth Shaw LLP, for the  
13 defendant Tizi LLC.

14 MR. SIPCHEN: Good morning, your Honor, Jim Sipchen  
15 representing the defendant Fordham Real Estate LLC.

16 MR. MOSS: Good morning, your Honor, Edward Moss here  
17 for TD Bank.

18 MR. DUFF: Good morning, your Honor, Kevin Duff, also  
19 for TD Bank.

20 THE COURT: Good morning.

21 So, where are we in this \$49.5 million case?

22 MR. DUNN: Judge, where we are at right now is that  
23 Mr. Laytin and the general partner, as well as Fordham, who is  
24 the developer, and TD Bank, who is escrow agent, they have all  
25 filed motions to dismiss.

1           There are various bases, but one of the bases is that  
2   Ms. Yao, the class representative and current plaintiff, has  
3   signed a settlement agreement with Mr. Laytin.

4           We have filed --

5           THE COURT: As to all of her claims?

6           MR. DUNN: As to all of her claims, yes.

7           We are currently in -- we were in -- negotiations with  
8   Dan regarding -- and with Mr. Laytin regarding -- settlement of  
9   our nine other clients. Those negotiations have gone nowhere.

10          We filed a motion to enforce the settlement, because  
11   we think that they are in breach of the terms. But I have a  
12   suggestion for the Court.

13          It appears in their motion to dismiss that EB-5, the  
14   fund, and Mr. Laytin, who is the primary party here because  
15   through the PPM and through the offering there are various  
16   indemnification agreements that all -- all -- of these parties  
17   kind of lead back to Mr. Laytin.

18          So, what we might suggest to the Court is that as we  
19   were talking with Mr. Hildebrand, we wanted to file an amended  
20   complaint adding our other plaintiffs.

21          And what we might suggest is, since they have said in  
22   their pleadings that they anticipate they encountered some  
23   unanticipated obstacles with a family trust or some other  
24   things to pay the money, which has its own set of concerns, but  
25   if we can set a date for them to make the payment that they

1 anticipate making to Ms. Yao, which is a \$562,000 payment, out  
2 of, you know, \$50 million worth of funds, maybe we can set a  
3 status date after that, before which we can file our amended  
4 complaint.

5 And, in that way, either they will have paid Ms. Yao;  
6 she will be out; we can amend her out and add our nine new  
7 plaintiffs; or, they will not have paid Ms. Yao and, then, we  
8 will file an amended complaint with ten plaintiffs, including  
9 Ms. Yao, and we will be filing a different motion, whether it  
10 is a motion for sanctions or for whatever the case may be.

11 And, at that time, the other defendants -- I think we  
12 can cure some of what the other defendants are complaining of,  
13 in terms of the factual pleading. And, at that time, they can  
14 either review their motions or their motions will be moot.

15 And that might be the most efficient way for us to  
16 proceed. And we can do that fairly quickly, if, you know --  
17 depending on what Mr. Laytin's attorney can say, in terms of  
18 what "paying in the coming days" means to them.

19 THE COURT: When is the payment scheduled or  
20 anticipated?

21 MR. LITOWITZ: That's --

22 MR. DUNN: Let him -- let him -- talk.

23 MR. HILDEBRAND: Your Honor, if I may, Dan Hildebrand  
24 for the Carillon Tower defendants.

25 The settlement agreement is fully executed. It runs

1 between Carillon Tower LP, the limited partnership entity of  
2 which Mr. Laytin is a manager, okay, and Ms. Yao.

3 It is fully executed. It provides for prompt payment  
4 of the redemption consideration.

5 The structure of the agreement is to return the full  
6 amount of Ms. Yao's limited partnership.

7 THE COURT: Is that the \$500,000?

8 MR. HILDEBRAND: Yes, yes.

9 So, the -- it is called a redemption agreement.

10 The structure provides for the return of Ms. Yao's  
11 full interest in the limited partnership.

12 And the terms of the agreement provide for prompt  
13 payment. And my clients intended to tender payment shortly  
14 after the agreement was fully executed. And they ran into some  
15 internal issues, shall we say, with the structure of the  
16 partnership.

17 I am really not privy to the details.

18 THE COURT: Yes.

19 MR. HILDEBRAND: I think they need to round up some  
20 signatures from a family trust and they just didn't anticipate  
21 that --

22 THE COURT: Well, lots of --

23 MR. HILDEBRAND: -- when we were executing the  
24 agreement.

25 THE COURT: -- times, in cases like this, it is a

1 question of rounding up money as opposed to signatures.

2 (Laughter.)

3 MR. HILDEBRAND: Yes.

4 And I think -- I think -- that is where we are.

5 The only -- the only -- difficulty -- I am in general  
6 agreement with Mr. Dunn's proposal. I do not have enough  
7 information to provide a date certain as to whether it will be  
8 48 hours or 72 hours or --

9 THE COURT: Well --

10 MR. HILDEBRAND: -- another five days.

11 THE COURT: -- "prompt" means sooner rather than  
12 later.

13 MR. HILDEBRAND: Yes, we understand that.

14 MR. LITOWITZ: If I may, your Honor?

15 We filed a case in New York where Mr. Laytin, the  
16 defendant, promised to make payment to a different investor in  
17 this exact same deal in October and has not made payment.

18 There is a lawsuit in New York to enforce payment of  
19 that settlement. So, we have no faith whatsoever that this  
20 money is anywhere.

21 We --

22 MR. DUNN: All right.

23 Maybe you should give them an opportunity.

24 THE COURT: Yes, yes.

25 Hold on.

1           Look --

2           MR. DUNN: If they are going to commit to a date and  
3 the Court wants to enter an order, then we can proceed from  
4 there.

5           THE COURT: The present tentative agreement is prompt  
6 payment. So, we will know that sooner rather than later.

7           MR. LITOWITZ: It was prompt payment.

8           THE COURT: Pardon?

9           MR. LITOWITZ: Yes, it was prompt payment --

10          THE COURT: Right.

11          MR. LITOWITZ: -- two weeks ago.

12          THE COURT: Well, it will be even prompter now --

13          (Laughter.)

14          THE COURT: -- by two weeks.

15          (Laughter.)

16          THE COURT: Let me leave on hold the notion of an  
17 amended complaint until I hear from anybody else who opposes  
18 the notion of a short delay to see if payment is made and  
19 whatever other terms of the agreement are satisfied; and, then,  
20 the necessity to either have ten plaintiffs or nine new ones.

21          That is the proposal on the table.

22          Who has a dissent from that?

23          (No response.)

24          THE COURT: All right.

25          What period of time do you think is called for, to see



1 if the payment is made and your amendment, no matter which way  
2 it goes -- either add nine or substitute nine for one?

3 MR. DUNN: You know, I am going to be in Mississippi  
4 all next week taking depositions in another matter. So, I  
5 don't think I can do it any faster than two weeks, your Honor.

6 And I think that gives -- Mr. Hildebrand had said 78  
7 hours or maybe a couple days. So, I think two weeks is  
8 certainly within the period of time that --

9 THE COURT: Two weeks would be more than ample.

10 MR. DUNN: Okay.

11 THE COURT: And if that is your schedule and you are  
12 necessary here, then I am inclined to give you the two weeks  
13 and see where it goes.

14 MR. DUNN: I think that is great.

15 THE COURT: Now, is there any -- was there a  
16 request -- somebody wants a preliminary injunction for  
17 information on various things. And, so, is that still alive  
18 and pending?

19 It is pending, but is it alive and precipitous --

20 MR. DUNN: The character --

21 THE COURT: -- for resolution?

22 MR. DUNN: The character of that preliminary  
23 injunction, your Honor, will be colored, I think, quite a lot  
24 by whether or not Mr. Laytin agrees or whether he makes the  
25 payment pursuant to his counsel's representation.

1           And I think I would also suggest to the Court that  
2 perhaps we continue that TRO until we reconvene in two weeks.  
3 And, at that time, we will know whether or not there is good  
4 faith, in terms of, you know, their intention --

5           THE COURT: All right.

6           MR. DUNN: -- to make good on their settlement.

7           MR. HILDEBRAND: May I?

8           THE COURT: Go ahead.

9           MR. HILDEBRAND: Yes.

10           So, your Honor, I understand the practical wisdom of  
11 the approach Mr. Dunn is advocating. And I just want to state  
12 my client's position for the record.

13           Having entered into an executed settlement agreement,  
14 Ms. Yao is not properly before the Court. That is why we filed  
15 a motion to dismiss based on lack of subject matter  
16 jurisdiction.

17           So, I am happy to go along with this, but there is no  
18 plaintiff right now that can assert a preliminary injunction.

19           THE COURT: Well --

20           MR. HILDEBRAND: There is a further --

21           THE COURT: -- she is still in this case, right?

22           MR. DUNN: Yes.

23           MR. LITOWITZ: She hasn't --

24           THE COURT: Yes. I have not gotten rid of her yet.

25           MR. DUNN: Right.

1 MR. LITOWITZ: Right.

2 THE COURT: So, she is alive and well --

3 MR. DUNN: Correct.

4 THE COURT: -- and waiting for her 500,000 bucks.

5 MR. HILDEBRAND: I understand, your Honor.

6 THE COURT: Okay?

7 All right.

8 MR. HILDEBRAND: I just wanted to get our subject  
9 matter --

10 THE COURT: I appreciate that --

11 MR. HILDEBRAND: -- jurisdiction on the record.

12 THE COURT: -- but those are pending matters. And  
13 there have been no court orders saying she is a non-entity  
14 here.

15 MR. DUNN: That is right.

16 MR. HILDEBRAND: Very good.

17 THE COURT: So, I, at least facially, have subject  
18 matter jurisdiction.

19 MR. HILDEBRAND: You do. And I agree with the wisdom  
20 of Mr. Dunn's approach.

21 THE COURT: All right.

22 MR. HILDEBRAND: I just wanted to get that position on  
23 the record.

24 THE COURT: All right.

25 I take it there is no dissent to putting everything

1 over for two weeks, to see if the execution is achieved and  
2 what the nature of the amendment is going to look like and how  
3 much time would be needed to prepare such and file such.

4 MR. LITOWITZ: I do have one thing, your Honor, if you  
5 don't -- if you don't -- mind me asking?

6 THE COURT: No.

7 MR. LITOWITZ: Our clients put forty-nine-and-a-half  
8 million dollars into this in 2015.

9 The project was rejected. It has gone nowhere.

10 The money can't have been spent on anything because  
11 there is no project.

12 THE COURT: Was this the property at -- I realize --

13 MR. LITOWITZ: Superior and Wabash.

14 THE COURT: Superior and Wabash --

15 MR. LITOWITZ: Yes.

16 THE COURT: -- is a vacant lot?

17 MR. LITOWITZ: It is a vacant lot.

18 It was rejected by Alderman Reilly and it can't go --  
19 and it can't go -- before the City Planning Commission. We  
20 talked to them yesterday.

21 So, here is my point.

22 THE COURT: Look, I know how the City works.

23 (Laughter.)

24 MR. LITOWITZ: I got you.

25 So, here is my point. If the money can't be spent on

1 anything, it must be somewhere.

2 TD was the last person that had it. Because it went  
3 from our clients to TD.

4 They are claiming that they don't know how they had it  
5 or where it went or where it got to.

6 They are saying there may be a contract, there might  
7 not be a contract.

8 It has got to be somewhere.

9 THE COURT: I do not disagree.

10 MR. DUNN: Right.

11 THE COURT: It may have been dispersed or dissipated,  
12 but people invested fifty million bucks, if you will -- just to  
13 round -- and they did not get what they were promised. That is  
14 the gist of this case.

15 MR. LITOWITZ: Yes.

16 THE COURT: And I assure you before this proceeding is  
17 over, there is going to be some answers to those questions.  
18 Okay?

19 But the present question before the House is, is it  
20 worth streamlining the pleadings and putting them in shape and  
21 manifesting jurisdiction in this court by a delay of two weeks  
22 and to see, at least, some bona fides in an agreement that has  
23 already been reached and see if the term is satisfied. Okay?

24 And I think it is, quite frankly. And that is why I  
25 asked the question about getting information. Because fifty

1 million bucks went someplace and this lawsuit is, "We want our  
2 money back." I understand that.

3 MR. DUNN: Okay.

4 THE COURT: All right. Give me a two-week date.

5 THE CLERK: February 26th at 9:30.

6 THE COURT: Okay.

7 Good luck. And we will see you in a couple of weeks.

8 MR. HILDEBRAND: Thank you, your Honor.

9 THE COURT: Thank you.

10 MR. DUNN: Thank you, your Honor.

11 MR. LONG: Thank you, your Honor.

12 MR. SIPCHEN: Oh, your Honor?

13 THE COURT: Yes?

14 MR. SIPCHEN: There are motions to dismiss for  
15 presentment dates that are on your calendar.

16 THE COURT: Yes.

17 MR. SIPCHEN: Maybe we can enter and continue those?

18 THE COURT: Yes, they will all be entered and

19 continued --

20 MR. SIPCHEN: Okay.

21 THE COURT: -- and we will, at least, allude to them  
22 when we next meet.

23 MR. SIPCHEN: Okay.

24 THE COURT: All right.

25 MR. SIPCHEN: Very good.

1 Thank you, your Honor.

2 MR. LONG: Thank you, Judge.

3 MR. DUNN: Thank you, your Honor.

4 \* \* \* \* \*

5 I certify that the foregoing is a correct transcript from the  
6 record of proceedings in the above-entitled matter.

7 /s/ Joene Hanhardt  
8 Official Court Reporter

March 19, 2019

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